

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-v-

JATIEK SMITH et al.,

Defendants.

22-cr-352 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.:

Following conclusion yesterday of the taking of evidence in the bench trial of this criminal case, defendant Jatiek Smith timely moved for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29. Count I of the indictment charges Smith with racketeering conspiracy in violation of 18 U.S.C. § 1962(d) and Count II charges Smith with extortion conspiracy in violation of 18 U.S.C. § 1951. In support of Count I, the Government alleges the conspirators agreed to engage in a variety of predicate criminal acts, including, *inter alia*, evidence tampering in violation of 18 U.S.C. § 1512(c)(1), which makes it a crime to "corruptly . . . alter[], destroy[], mutilate[], or conceal[] a record, document, or other object, or attempt[] to do so, with the intent to impair the object's integrity or availability for use in an official proceeding."

At the close of trial, the only evidence the Government had presented to support the predicate act of conspiracy to violate 18 U.S.C. § 1512(c)(1) was the alleged attempt by Smith to break one of his two cellphones when confronted by an FBI Agent with a warrant for its production. (Smith later turned over the phone). For the

reasons already largely stated on the record, see Dec. 11, 2023, Trial Tr., the Court concludes that no rational trier of fact could find beyond a reasonable doubt that the alleged attempt to break the phone (which Smith denies) was pursuant to an agreement between Mr. Smith and his alleged co-conspirators to engage in conduct of a kind that would constitute a violation of 18 U.S.C. § 1512(c)(1). See *United States v. Jackson*, 335 F.3d 170, 180 (2d Cir. 2003). Accordingly, with respect to the alleged predicate act of conspiring to violate 18 U.S.C. § 1512(c)(1), the defendant's motion pursuant to Federal Rule of Criminal Procedure 29 is hereby granted. In all other respects, the defendant's motion is hereby denied.

New York, NY
December 12, 2023


JED S. RAKOFF, U.S.D.J.